



[7590-01-P]

## NUCLEAR REGULATORY COMMISSION

[NRC-2013-0046]

### Temporary Scope Expansion of the Post-Investigation Alternative Dispute Resolution Program

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of temporary scope expansion.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is expanding the scope of the post-investigation Alternative Dispute Resolution (ADR) Program for a 1-year pilot period. The NRC and its licensees are the parties to this form of ADR. Currently, post-investigation ADR is used in the NRC's Enforcement Program for cases involving discrimination and other wrongdoing after the NRC's Office of Investigations has completed an investigation substantiating the allegation. The pilot ADR Program will expand post-investigation ADR to include all escalated non-willful (traditional) enforcement cases with proposed civil penalties (this will not include violations associated with findings assessed through the Reactor Oversight Process (ROP)<sup>1</sup>).

---

<sup>1</sup>Reference to the ROP includes the construction ROP.

**ADDRESSES:** Please refer to Docket ID **NRC-2013-0046** when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, using any of the following methods:

- **Federal Rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2013-0046**. Address questions about NRC dockets to Carol Gallagher; telephone: 301-492-3668; e-mail: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov).
- **NRC's Agencywide Documents Access and Management System (ADAMS):**

You may access publicly available documents online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "[ADAMS Public Documents](#)" and then select "[Begin Web-based ADAMS Search](#)." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Russell Arrighi, telephone: 301-415-0205, e-mail [Russell.Arrighi@nrc.gov](mailto:Russell.Arrighi@nrc.gov); or Maria Schwartz, telephone: 301-415-1888, e-mail [Maria.Schwartz@nrc.gov](mailto:Maria.Schwartz@nrc.gov). Both of these individuals can also be contacted by mail at the U.S. Nuclear Regulatory Commission, Office of Enforcement, Concerns Resolution Branch, Washington, DC 20555-0001.

**Background:**

The term “ADR” refers to a number of voluntary processes, such as mediation and facilitated dialogues that can be used to assist parties in resolving disputes and potential conflicts. These techniques involve the use of a neutral third party, either from within the agency or from outside the agency, and are voluntary processes in terms of the decision to participate, the type of process used, and the content of the final agreement. Federal agency experience with ADR has demonstrated that the use of these techniques can result in more efficient resolution of issues, more effective outcomes, and improved relationships between the agency and the other party.

On August 14, 1992 (57 FR 36678), the NRC issued a general policy statement which supports and encourages the use of ADR in NRC activities. On September 8, 2003, the Commission approved an NRC staff proposal to develop and implement a pilot ADR Program to evaluate the use of ADR in handling allegations or findings of discrimination and other wrongdoing. (see the staff requirements memorandum (SRM) for SECY-03-0115, “Alternative Dispute Resolution Review Team (ART) Pilot Program Recommendations for Using Alternative Dispute Resolution (ADR) Techniques in the Handling of Discrimination and Other External Wrongdoing Issues” (ADAMS Accession No. ML030170277). In response to the SRM, the NRC staff proposed a pilot ADR Program to evaluate the use of ADR in the Enforcement Program in SECY-04-0044, “Proposed Pilot Program for the Use of Alternative Dispute Resolution in the Enforcement Program,” dated March 12, 2004 (ADAMS Accession No. ML040550473). The Commission approved the pilot ADR Program (August 13, 2004; 69 FR 50219), and the NRC staff began implementing it in September 2004.

In SECY-06-0102, "Evaluation of the Pilot Program on the Use of Alternative Dispute Resolution in the Allegation and Enforcement Programs," dated May 5, 2006 (ADAMS Accession No. ML061110254), the NRC staff provided the Commission with the results of the evaluation of the pilot ADR Program. The NRC staff concluded that implementation of the pilot ADR Program was successful. The Program was effective, timely, and generally viewed positively by both internal and external stakeholders. Accordingly, the staff indicated its intent to continue to use ADR in both the Allegation and Enforcement Programs while obtaining Commission approval for the changes necessary to formalize the use of ADR in the Allegation and Enforcement Policy documents. Since ADR program implementation, the NRC has reached settlement agreements with licensees (or contractors) and individuals, and has issued subsequent ADR confirmatory orders in more than 90 enforcement cases.

On December 16, 2010, the NRC Chairman issued a memorandum, "ADR Implementation and Assessment" (ADAMS Accession No. ML12030A228) tasking the NRC staff to conduct a comprehensive review of the ADR program, including determining if it should be expanded. On September 6, 2011 (76 FR 55136), the NRC solicited nominations of individuals to participate on a panel to discuss ADR program implementation and whether changes could be made to make it more effective, transparent, and efficient. On October 17, 2011 (76 FR 64124), the NRC announced its intention to hold a public meeting to solicit feedback from its stakeholders on the ADR Program. During the November 8, 2011 public meeting, the NRC external stakeholders expressed support for the expansion of the ADR Program to the extent possible.

For purposes of discussing the expansion of the ADR program, it is necessary to distinguish between the two types of programs, early ADR and post-investigation ADR. These programs differ because of the parties involved. In early ADR, a licensee or contractor engages in mediation with its employee; where as in post-investigation ADR, the NRC engages in mediation with the subject of a potential enforcement action.

In SECY-12-0161, "Status Update, Tasks Related to Alternative Dispute Resolution in the Allegation and Enforcement Programs," dated November 28, 2012 (ADAMS Accession No. ML12321A145), the NRC staff notified the Commission of its intent to expand the scope of post-investigation ADR and offer it as an option for escalated non-willful (traditional) enforcement cases with proposed civil penalties for a 1-year pilot period. The expansion of the Program does not include violations associated with findings assessed through the ROP. The current program for post-investigation ADR is limited to discrimination and other wrongdoing cases.

At the completion of the 1-year period, the NRC staff will evaluate the results of the pilot ADR Program and seek Commission approval for the permanent inclusion in the Enforcement Policy if the expanded scope is deemed beneficial to the advancement of the agency's mission.

#### **Paperwork Reduction Act Statement**

This Notification does not contain any information collections and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

### **Public Protection Notification**

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

### **Congressional Review Act:**

In accordance with the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the OMB Office of Information and Regulatory Affairs.

Dated at Rockville, Maryland, this 25<sup>th</sup> day of February 2013

For the Nuclear Regulatory Commission.

Roy P. Zimmerman, Director  
Office of Enforcement

**[FR Doc. 2013-05306 Filed 03/06/2013 at 8:45 am; Publication Date: 03/07/2013]**